

May 31, 1983

The Honorable Benjamin L. Cardin  
Speaker of the House of Delegates  
State House  
Annapolis, Maryland 21404

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 1030.

House Bill 1030 was passed by the General Assembly to fill the void left after the United States District Court for the District of Maryland held the Maryland Corporate Take-Over Law to be unconstitutional in the case of Bendix Corp. v. Martin Marietta Corp., 547F. Supp. 522 (D. Md. 1982). The Attorney General has advised me that House Bill 1030 is not clearly unconstitutional on its face. I believe, therefore, that such legislation could avoid the constitutional objections found in existing law, but I also believe that there are practical problems associated with the bill which stem from a legal uncertainty with respect to the scope of the exemptions to the stringent provisions of the bill.

The evil which both the unenforceable Corporate Take-Over Law and House Bill 1030 addresses is the so-called "front load" or "two tier" corporate acquisition tactic in which the potential acquirer offers to purchase a controlling interest in the "target" corporation at a premium price. After purchasing that interest, usually through a carefully orchestrated public tender offer of a limited duration, the new controlling interest causes the "target" to be merged or consolidated with it or with yet another entity which it fully controls. This "second step" merger or consolidation transaction usually includes an exchange or redemption of the shares which are not owned by the controlling interest for a value which is considerably less than the price offered in the initial tender offer.

Typically, the owners of the shares who are forced to exchange their shares during the "second step" are the small and relatively unsophisticated investors who were not in a position to take advantage of the terms of the "front loaded" public tender offer. Other usual consequences of these corporate takeovers are the replacement or elimination of the incumbent management group of the acquired corporation and the transfer of the corporate headquarters of the combined entity to the site of the acquiring corporation's headquarters.

House Bill 1030 makes such corporate action difficult by imposing stringent requirements on the approval of the "second step" of "two tier" corporate takeover transactions. Those takeovers customarily generate much hostility between the management of the "target" and that of the acquiring entity. In such battles, the interests of the holders of the untendered